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THE PROCTER & GAMBLE COMPANY			KUMAR, PREETI	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/862,869
Filing Date: May 22, 2001
Appellant(s): HONMA ET AL.

MAILED
FEB 01 2007
GROUP 1700

The Procter and Gamble Company
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 21, 2006 and supplemental section (5) filed October 11, 2006 appealing from the Office action mailed September 24, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the substitute section (5) filed 10/11/2006 is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes to appellant's statement of the grounds of rejection to be reviewed on appeal are as follows:

C. Whether claims 5, 11, 17, 23, and 33 are allegedly unpatentable under 35 U.S.C. 103(a) over Florman in view of U.S. Patent No. 5,710,884 to Dedrick.

The Appellant states in part C: Whether claims 5, 11, 17, 23, and 33 are allegedly unpatentable under 35 U.S.C. 103(a) over Florman in view of U.S. Patent No. 4,775,935 to Yourick ("Yourick") and U.S. Patent No. 5,710,884 to Dedrick ("Dedrick"). This is incorrect since Yourick and Dedrick were secondary references cited in the alternative.

Examiner no longer relies on Yourick (US 4,775,935) as an alternative secondary reference.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Florman et al. "How To Clean Practically Anything" Consumer Reports Books Third Edition/Updated , Fifth Printing, (December 1994), p 80-84, 95-97, 110-111.

(9) Grounds of Rejection

Claims 1-4, 6-10, 12-16, 18-22, 24-32, 34-39 are rejected under 35 U.S.C. 102(b) as anticipated or alternatively under 103(a) as being unpatentable over Florman et al, How to Clean Practically Anything.

Each of the steps in each of the claims is notoriously well known. In the fabric care industry, each fabric care product marketed comes with a label giving instructions for use. See TIDE, BOUNCE, and DOWNY packages all manufactured by Procter and Gamble. Regarding a prespotting composition, its very name denotes how it is used without further instructions. Anyone who does not know that it is used to treat a garment before placing the garment in the washing machine with a detergent composition will certainly know that it is used in conjunction with the post-use of a detergent composition which is used in a washing machine or by hand. In a similar manner, if one does not know that a dryer sheet is used in a clothes dryer in conjunction with a load of clothes that has previously been washed in a washing machine or by hand with a detergent, one can find that information on the packaging of BOUNCE dryer sheet.

Regarding a liquid fabric softener, the package invariably contains directions to add to the final rinse, which assumes that it is being added to a washing machine after the clothes have been washed by a detergent. No other instructions are necessary. Instructions for the use of another fabric care product in conjunction with a detergent not necessary because each of the fabric care compositions comes with its own instructions and methods of use.

Florman et al. teach that each of the steps in each of the claims is notoriously well known. In the fabric care industry, each fabric care product marketed comes with a label giving instructions for use.

Beginning on page 81, Florman et al. teach conventional ways to cope with a pile of dirty laundry. In fact they disclose the rankings of several fabric care products in the subsequent pages.

Under "Recommendations" on page 82 and following, Florman et al. give recommendations for use of bleaches, boosters (spotting agents) in the form of powders, sprays, liquids and sticks.

The information on pages 83-84 discloses the effectiveness of using the boosters along with detergent compositions. Anyone who has done a home laundering knows that all of these products are used prior to placing the fabric articles in a washing machine comprising a detergent. Application methods of the boosters are discussed on page 84 under "Convenience."

Detergents are discussed at page 95 et seq. Again stain removal is discussed. Under Ink, motor oil on page 96, Florman et al. state, "However, results improve remarkably if you use certain detergent boosters before laundering."

On page 110, under "Effectiveness" Florman et al. discuss the use of fabric softeners, stating, "Add rinse liquids at the beginning of the final rinse (after a wash with a no-extras detergent), and toss the dryer sheets into the dryer with the wet laundry."

Instructions for the use of another fabric care product in conjunction with a detergent are not patentable because each of the fabric care compositions comes with its own instructions and methods of use.

Regarding the claims to providing personalized instructions, it is not clear how one gives personalized instructions except as is given in Florman et al. for the removal of specific contaminants from fabrics (See page 96). A method of removing a specific stain is akin to a personalized instruction since it is a variant of fabric care instructions in response to a consumer's individualized need. Florman et al. provides such personalized instructions.

Accordingly these methods of use of conventional fabric conditioners are so notoriously well known that no instructions are needed on the packaging. However, Florman et al. also suggest that if instructions are necessary, one of ordinary skill in the art is guided by Florman et al. to use conventional fabric conditioners according to label instructions or can be used by modifying label instructions. See page 83, last line of Boosters paragraph.

Florman et al. also teach the coordinated elements limitation in the claims, see Florman's statement on page 83, second paragraph under "BOOSTERS" which states, "They may contain many of the same ingredients as detergents: surfactants, or cleaning agents; enzymes; water-softening "builders"; fluorescent dyes: and so forth. The powders include all-fabric bleach." This statement reveals that boosters and detergents do generally contain the same coordinated elements such as characteristic ingredients and dyes, which elements are recited by the material limitations of the instant claims.

On page 111, Florman et al. state, "If whiter whites and brighter brights are important to you, use a detergent with good brightening ability before you use a softener."

Florman et al. anticipate the methods of providing fabric treatment compositions claimed in the instant claims by providing detergent compositions and fabric care compositions comprising fabric conditioning compositions, dryer sheets, pretreatment compositions and other conventional laundry treatment compositions, and instructions for using them together, for example, the prespotters (boosters) before washing with a detergent, bleach before or simultaneously with a detergent, and fabric softeners in the form of dryer sheets in the dryer subsequently to washing with a detergent or liquid softeners added to the final rinse of a wash.

Florman et al. additionally discuss the order of using each composition, which is not their invention, but is well known. Specifically see the first paragraph under "Effectiveness" on page 110. There is nothing inventive in using said fabric care products, the order in which they are used, or in providing instructions for using them in sequence. Accordingly, the teachings of Florman et al. anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of Florman et al. are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art, to arrive at the claimed method for caring for a fabric article, comprising providing a laundry detergent having a set of laundering instructions and providing a fabric treatment

composition wherein the fabric treatment composition and the laundry detergent possess one or more coordinated elements as recited by the instant claims, because Florman et al. teach the sequence in which detergents and softeners are used. It is not inventive to sell products known to be used in sequence, with instructions to use them in sequence. It is giving the consumer information which is in the public domain. In a similar manner, if one does not know that a dryer sheet is used in a clothes dryer in conjunction with a load of clothes that has previously been washed in a washing machine or by hand with a detergent, one can find that information on the label.

Claims 5,11,17, 23 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Florman et al. in view of Dedrick, US 5,710,884.

Florman et al. is applied as set forth in the above rejections. However Florman et al. do not teach a method of providing a personalized profile and giving instructions consistent therewith.

Dedrick discloses the use of a computer to gather and store information to provide a personal profile and provide a system which customizes the electronic information to the individual end users which will consume the information. See abstract and col.1,ln.25-40.

It would have been obvious to the skilled artisan to modify the general teaching of companies evaluating consumers personal preferences as taught by Florman et al. and use the method of Dedrick to collect information to create a personal profile by monitoring a consumer's habits and needs as disclosed by

Dedrick and from the information provided, provide personalized instructions on cleaning any stain or garment type from data stored in a computer because Florman et al. in view of Dedrick suggest customizing instructions and information for individuals to consume that information and follow it as a beneficial system. One of ordinary skill in the art would have been motivated to combine the teachings of Florman et al. with that of Dedrick, (US 5,710,884) because, Florman et al. provide the teaching that companies evaluate consumers personal preferences in general. See page 111 where Florman et al. discuss the option of fragrances stating “makers of laundry products include fragrances partly because someone at the company thinks consumers like them...”.

(10) Response to Argument

Appellants urge that addressing brand name products within the office action is tantamount to the Examiner taking official notice and should provide another supporting reference.

This is not found convincing since the primary reference already teaches that consumers should look for their personal preferences on the packaging of the product. Specifically, Florman et al. teaches that fabric treatment compositions and detergent compositions “sport names that end in “free” are available” for consumers” with aesthetic and/or allergic reasons. See page 111. The primary reference is already teaching one of ordinary skill to read the names/labels of the detergent and fabric treatment compositions and thus, no supporting reference is necessary.

Furthermore, Appellents own arguments on page 6, of the brief filed 8/21/2006, paragraph 3, states that "... many consumers use TIDE, a laundry detergent, with DOWNY, a fabric softener. These products, while made by the same manufacturer (The Procter & Gamble Company), do not have the same brand name, trade dress, container graphics, etc...". Appellant's own admission overcomes the material limitations of the instant claims since Appellant's acknowledge that it is notoriously well-known that consumers use TIDE laundry detergent in combination with DOWNY fabric softener both compositions having the same manufacturers name and logo which encompasses the limitation to coordinated elements such as container graphics as recited by the instant claims.

Appellants urge that Florman et al. do not teach the claimed composition, wherein the set of laundering, instructions comprise a laundering recommendation to use the laundry detergent composition in combination with the fabric treatment composition wherein the set of fabric treatment instructions comprise a fabric treatment recommendation to use the fabric treatment composition in combination with the laundry detergent composition: and wherein the fabric treatment composition and the laundry detergent composition possess one or more coordinated elements selected from a brand name, container graphics, containers, the dosages per container, a dye, a perfume, trade dress, and combinations thereof.

Appellants arguments are not convincing because it has been held that where the only difference between the prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the

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printer matter will not distinguish the claimed product from the prior art. *In re Ngai* 367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004). In the instant case, Appellants laundering instructions cannot be found patentable since the printed matter does not impart functionality to the laundry detergent composition and the fabric treatment composition.

Further contrary to Appellants arguments, Florman et al. teach the use of fabric softeners in combination with the detergent. Specifically, Florman et al. teach that it is well known to add the detergent- fabric softener to the laundry load at the beginning of the final rinse. See under Effectiveness, page 110. Florman et al. also teach the coordinated elements limitation in the claim, see Florman's statement on page 83, second paragraph under "BOOSTERS" which states, "They may contain many of the same ingredients as detergents: surfactants, or cleaning agents; enzymes; water-softening "builders"; fluorescent dyes: and so forth. The powders include all-fabric bleach." This statement reveals that boosters and detergents do generally contain the same coordinated elements such as characteristic ingredients and dyes, which elements are recited by the material limitations of the instant claims.

Appellents urge that Florman et al. suggests forgetting brand loyalty and buying whatever satisfactory product is on sale.

Contrary to Appellants arguments, Florman et al. state at page 97 under "PRICES:" You don't have to pay extra for performance. Indeed, there is little correlation between price and cleaning ability. You pay more for the convenience of liquid or measured packets. ... You can save the most money by forgetting

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brand loyalty: Clip coupons and stock up on whatever satisfactory product is on sale." This statement is directed to those who are loyal to a particular brand, inferring that most consumers are loyal to brand names, trade dress and container graphics, etc and will use all fabric care products from the same manufacturer when they find a product that is successful in the laundry.

Alternatively, those consumers eager to save money, will choose all of those products which have container graphics indicating that the product is a bargain.

Florman et al. state on page 97 next to last paragraph, "If you suffer from allergies or sensitive skin, consider a detergent without enzymes or perfumes, the most likely sources of irritation." Accordingly, a consumer with allergies looks for all fabric care products which state that they are allergy-free. Florman's teachings in PRICES is based on the well known tendency of most consumers to be loyal to a brand and need to be told how to save money. Florman et al., read in proper context, teach that most people do not forget brand names. Since the majority of consumers are brand-loyal the claimed subject matter is not novel or unobvious.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Examiner Preeti Kumar AU.1751 P.K.

Conferees:

Greg Mills



Doug McGinty



(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner
in the Related Appeals and Interferences section of this examiner's answer.